

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 553 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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RAMESHKUMAR NARANDAS SONI

Versus

UNITED INDIA INSURANCE CO.LTD.  
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Appearance:

MR YATIN SONI for Petitioner

MR DARSHAN M PARIKH for Respondent No. 1  
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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 11/02/2000

ORAL JUDGEMENT

This Appeal From Order is preferred by the  
original plaintiff of Special Civil Suit No. 7/96,  
whereby the learned Civil Judge (SD) Palanpur, on 24.4.96  
passed the judgment and decree in favour of plaintiff and  
respondent was directed to pay a sum of Rs. 67,010/ with

interest at the rate of 15% per annum from the date of the suit till realisation. The respondent filed an application being Misc. Civil Application No. 9/97 under Order 9 Rule 13 of Code of Civil Procedure for setting aside the said judgment and decree. The learned trial judge after hearing the parties, by his judgment and order dated 30.9.98 allowed the said application and ordered to set aside the decree passed in Special Civil Suit No. 7/96 and restored the suit on the stage of filing the written statement as per prayer made in the application.

On behalf of the appellant, Mr Soni learned advocate contended that the trial court has committed an error in setting aside the judgment and decree and restoring the suit on the ground of non service of summons. In the submission of Mr. Soni the summons were duly served to respondent on 24.1.96. Mr Soni further submitted that the application for setting aside the ex-parte decree is also barred by the law of Limitation and, therefore, also the learned trial judge could not have entertained the application without there being any application giving sufficient cause for condoning the delay.

On the other hand, Mr. DM Parikh, learned advocate for the respondent submitted that the summons were not duly served upon the respondent. That the respondent was prevented by sufficient cause from appearing when the suit was called for hearing. Mr Parikh further submitted that in any case, when the court exercises the discretion in favour of the respondent and orders for re-trial of the suit, there will not be any prejudice to the appellant, and even on that ground also he prays for dismissal of this Appeal from Order.

Perusing the papers, it appears that the appellant has taken insurance of his two houses situated at village Malana of Palanpur taluka from the agent of respondent-company, having its branch office at Palanpur. It is the case of the appellant that on 6.12.92, the wall of the house was fell down as a cow dashed against the wall on 6.12.1992 with the result, there was extensive damage to the house. The appellant informed about this to the Palanpur office of the respondent-company. On 21.12.92 the appellant applied to the respondent claiming Rs. 92,000/- being the amount of damages. Since nothing was heard from the respondent, on 11.4.93 the appellant gave registered notice claiming Rs. 92,000/- with 18% interest. Since, there was no reply to the said notice, the appellant approached the Consumer Forum at

Palanpur. It also appears that simultaneously the appellant has also filed the present suit claiming Rs. 67,010/ with 15% interest. As can be seen from the judgment of the trial court, the office of the respondent at Palanpur was served with the summons on 24.1.96 and since nobody appeared, the trial court, on 24.4.96 pronounced the judgment by exercising powers under Order 8, Rule 10 of Code of Civil Procedure.

Since the trial court exercised powers under Order 9, Rule 13 of the Code of Civil Procedure and has set aside the decree, the only question to be decided in this appeal is whether the respondent was duly served with the summons or that it was prevented by any sufficient cause from appearing when the suit was called out for hearing. My attention was invited by the learned advocate for the respondent to the provisions of Order 29, Rule 2 of Code of Civil Procedure which provides that subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served-

(a) on the secretary, or on any director, or other principal officer of the corporation, or,

(b) by leaving it or sending it by post addressed corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

It is the contention of the learned advocate for the respondent that since the appellant has not served with the summons to the registered office of the respondent situated at Madras and the summons was served at the Branch office at Palanpur, the summons was not duly served to the respondent. In my opinion, this submission is without any merits. The provisions of Order 29, Rule 2 provides "subject to any statutory provision regulating service of process", in other words, the service of summons to the corporation is subject to any statutory provisions. Order 5, Rule 13 provides service on agent by whom defendant carries on business, which reads as under:

(1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed

good service.

In the instant case, admittedly, respondent company is having its branch office at Palanpur where the work of respondent company is being carried out. There is no dispute to the fact that the Branch office at Palanpur has received the summons issued by the Court. It is for the Branch office to take appropriate instructions from the Head Office to their cause. Admittedly, no action was taken by the respondent from the date of service of summons i.e. on 24.1.96 to the date of the judgment i.e. 24.4.96. In this view of the matter, it cannot be contended that the respondent was not duly served with the summons of the court.

The next question that may arise is as to whether the respondent was prevented by any sufficient cause from appearing in the court. The only ground put forward by the respondent is that they committed bonafide mistake regarding the same number of civil suit and execution application i.e. no. 7/96. In my opinion, this explanation is no explanation and is required to be rejected for the simple reason that even though the number is co-incidentally common in special civil suit as well as the execution application, but execution application was filed after the judgment and decree. Once the respondent was served with the summons of the suit on 24.1.96, there was no reason for it not to appear and could not have waited for four months when the trial court was constrained to pass the judgment and decree. Later on when they received the summons for execution of the decree bearing the same number, they came to know about the execution of the decree. At the most, the same can be considered for the purpose of condoning the delay in filing the restoration application. Thus, merely because the suit as well as execution application is having common number, that fact itself cannot be a ground for the respondent to contend that because of the bonafide mistake of same numbers, they could not remain present and that is the sufficient cause within the meaning of Order 9, Rule 13 of the Code of Civil Procedure.

In view of above, it is not possible for me to accept the reasonings of the learned trial judge in allowing the application for restoration of the suit. In my opinion, no case is made out for the restoration. This is a case of sheer negligence on the part of the respondent corporation for which the appellant cannot be permitted to suffer.

In the result, this Appeal From Order is allowed with costs. The judgment and order dated 30.9.98 passed by the Civil Judge (SD) Palanpur in Civil Misc. Application No. 9/97 is set aside. On depositing the decretal amount before the trial court within 4 weeks from today, this order shall be stayed for 4 weeks from today to enable the respondent to take the matter before the higher forum.

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mandora/